THE YOVNGER BROTHER HIS APOLOGIE,

OR

A FATHERS FREE POWER

disputed, for the disposition of his Lands, or other his Fortunes to his Sonne, Sonnes, *or any one of them: as right Reason, the Lawes of God and Nature, the Civill, Canon, and Municipall Laws of this Kingdome doe command.*

PROV. 31.8. & 29.7.

Open thy mouth for the dumbe, in the *Cause of all the Children of Destruction.*
The *Righteous* considers the *Cause of the Poore:* but the *Wicked* regard not to know it.

OXFORD,
Printed by IOHN LICHFIELD for EDWARD FORREST, 1624.

THE YOUNGER BROTHER HIS APOLOGIE,

disputed, for the dilpolition of his Lands,

PROV. 31. 8. & 9. 72

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The Righteous conſidereth the cauſe of the Poor:
but the wicked regardeth not to know it.

OXFORD,

Printed by JOHN LICHFIELD for
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TO THE RIGHT WORTHY,
IVDICIOVS, AND ILLVSTRIOVS
PATRIOT:

VVILLIAM BVRTON

OF LINDLEY

In the County of Leiceſter,
Eſquire;

The Singular Ornament of his Family and Countrey:

THE PVBLISHER
conſecrates This, devotes Himſelfe, wiſhes all
Happineſſe.

TO THE RIGHT WORTHY,

IVDICIOVS, AND ILLVSTRIOVS

PATRIOT:

VVILLIAM BVRTON

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In the County of Leicester,

Esquire:

The Singular Ornament of his Family and Country:

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consecrates This devotes Himself, wishes all Happiness.

TO ALL FATHERS AND SONNES OF WORTHY *FAMILIES*

Whom Vertue, Birth, and Learning haue iustly stiled GENTLEMEN, *Health, Happinesse, and Encrease of the best Knowledge.*

AS in the Front of this brief Discourse, there is (Right Worthy Gentlemen) already deliuered vnto you some light of that which concernes the Qualitie, Reason, and Scope thereof: so doe I here sincerely professe, that I did not privatly write it at first but for private satisfaction; neither

doe I now make it publike, but with due relation to the generall good of *Great Brittaine*, and for the exercise of Honourable Spirits, in this our much-speaking and paradoxicall Age.

Not vpon the least presumption of a selfe-sufficiency, to confront thereby any receaved custome (if any such be) nor to diminish the naturall reverence due by Younger Brothers to their Elder; not to enkindle Emulations in Families; nor to innovate any thing to the prejudice of publike or private quiet (which none I hope will be so ill affected as to suppose,) neither mine inoffensiue zeale for younger Brothers (amongst whom I am ranked one,) nor the absolute consent of Imperiall and Ecclesiasticall Lawes (which I hauing a litle studied, doe not a little respect) nor the particular honor I bear to the vsages in this point, of our ancient Brittaines (from whom I am descended) nor desire to maintaine and justifie an Act in this kinde, done by a friend (whom I must ever reverence) nor yet the hope of bettering my private

fortunes

fortunes (which moues men much in these our times) hath drawne me to this Vndertaking: but principally (as before is somewhat touched) the singular respect which (as a *Patriot*) I beare to the glory, and good of Gentlemens houses, whose best originall, surest meanes of maintenance, and principall Ornament is *Vertue*, or Force of Minde: The want whereof, is a common cause of Ruine. The free power therefore of You who are Fathers, is here in some speciall cases argued and defended, to giue you occasion thereby to consider with the clearer Eye-sight, for the establishment & continuance of Families. Here also the naturall Rights of vs that are Children be so discoursed and discussed, as that We younger Brothers may haue cause & courage, to endeavour by vertuous meanes, to make our selues (without the least wrong to any) capable (if need shall be) of the chiefest vses. And Both, and All are so handled, as that no offence can reasonably arise in any respect: much lesse, for that the whole is conceaued

and written in nature onely of an Essay or Probleme, to which I binde no man to afford more beleefe, then himselfe hath liking of: being free to refute the whole, or any part at his pleasure, as he feeles himselfe able and disposed.

If I may seeme to some, to haue handled this Subject with more earnestnesse and Acrimonie then they thinke expedient: let them be pleased to weigh the *Decorum* of Disputes, which is principally herein observed: their nature absolutely requiring quicknesse and vehemency, on whether side soever.

As for the remedies of Evils, by way of enacting Lawes, that is the proper office of Magistrates, and Courts of publike Counsell: nevertheless to speak and treat of them (vnder the favour and correction of Superiours, to whom I doe alwaies very dutifully submit) is a thing which may well belong to every man. But, for those graue and learned Censors, to whom I may seeme to haue bestowed my paines in very needlesse Arguments

ments, because no lesse then I my selfe, they hold the case (as here it is put) to bee most cleere and out of controversie: to such I answer, that I writ it not for them, vnlesse perhaps to confirme their iudgements; but for others, who are not altogether so principled or perswaded. Nor to any, as to prescribe, or binde, further then their owne consciences shall thinke good. For that were farre too peremptory.

Finally, nothing being here defended but by Authority, Reason, and Example; nor any person taxed, nor particular personall Vices; if nevertheless I haue not perform'd my part in the Work so well as I desire, or as the Cause deserues (which I feare I haue not) yet my hope is (Right Worthy Fathers and Worthy Sonnes of Right Worthy Families) that for my honest meaning, and good Intentions sake, you will ever conceaue well of, and take into your speciall Protection,

Your vnfained Well-wisher,

I. A.

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THE

THE YOUNGER BROTHER HIS APOLOGIE.

CHAP. 1.

The occasion of writing this Apologie, is to proue that Fathers may in some cases dispose their worldly Estates to which of their Sonnes shall reasonably please, &c. for so much thereof as they will; & that to be lawfull by the Law of God, of Nature, and of Nations.

NOT many Moneths since being invited by a deare Friend of mine to a solemne Feast, made by him to many of his well-deseruing Friends, it was my fortune at that Meeting to acquaint my selfe with many Gentlemen of no meane discourse: Whereby I feasted as well my Vnderstanding with their pleasant

Societie, as my Taſt with the variety of moſt excellent Meats.

With what our ſenſes were delighted, I let paſſe to recompt, ſince neither profit, pleaſure, nor praiſe can ariſe thereof, either to the Writer or Reader. Onely my intent is, to make my Reader acquainted, what accident cauſed mee to write this ſmall Treatiſe, and emboldned me to publiſh the ſame to the common view of this all-reprehending Age. In which neuertheleſſe I rather hope for Allowance, then in any ſort feare Diſpleaſure.

For though my ſubject bee New, yet I hope it ſhall want at the firſt rather Age, and Strength, which growes by yeares; then probable Arguments, yea forcible Reaſons to defend it ſelfe. As for Friends, I truſt, it will finde ſome, and peradventure more then Enimies, if it deſerue well. For, as younger Brothers be more in number then Elder, ſo are they generally more free in beſtowing their deſerued Loue. For *Want* breeding *Vnderſtanding*, makes them know and prize their Friends † according to their Worth. Whereas the Elder, either ſeated in his Fathers Wealth or Poſſeſſions, with *more then hopes* to enjoy their Fortunes, doe ſometimes neither loue truly themſelues, nor any man elſe; but abuſing that which indeed might gain the loue of God and Man, & eaſily maintaine their hereditary Honour, looſe themſelues in Vanity & moſt idle courſes; yea in their Fathers liues, ſo ſtrangely carry themſelues (*preſuming rather on precedence of Birth, then Worth*) as though the Law

† Some *frends* ſtickecloſer then a *Brother*, Prov. 18. v. 24.

of God, of Nature, and all other Canon, Civill, & Nationall Lawes, Constitutions, and Customes sprung from them, could not either in Reason or Religion barre them of that which they expect; or giue to a well-deseruing younger brother any little *hope lawfully to share with them the least part of their Fathers Inheritance: much lesse to expect an Elder Brothers Fortunes: or *on any termes*, or *for any cause*, by a Fathers fauour, to steppe before them.

* The harsh and malevolent dispositi-on of *some Elder Brothers*, is graphically delineated by our Saviour in the Parable, Luc. 15. 28. [See vers. 32. *the Fathers Apology for the younger.*]

Which Argument among many others, was then handled by the Company *pro* and *contra* so doubtfully, that it gaue mee occasion to write this present Discourse concerning the free power of *some Fathers*. Wherein I intend not to displease or inconciliate Elder Brothers; no not them, who not inheriting their Fathers Vertues, striue not to maintaine their Ancestors Honour, in preseruing their Noble Names * and Familes, by which as a reward to their Vertues and Trauels, Men haue alwaies laboured to liue to all succeeding Ages, in their Posterity.

* Amongst all Gods temporall blessings promised as Rewards to his faithfull seruants, I finde none greater in holy Writ, thē the spreading of their Family. So God to Abraham, I will make of thee a mighty people. What God prizes as so great a guerdon to his best Favorites, shall *Vnworthy Man* esteeme a Trifle? Carpenter, Achitophel. part. 3.

But my intent is to shew, how *Opinion* and *Inconsideration* make oft-times the Wise to bee scrupulous, and through *superstitious Zeale*, not onely to feare to doe that which Reason may or might haue commanded; but in their *erroneous Iudgements* rashly to condemne other mens Acts as vnlawfull

and irreligious, which according to Reason and Religion haue beene done and ratified; vsing themselues THAT CVSTOME for the overthrow of their Families, which was indeed only deuised for their preservation; and being hoodwinkt with false conceipts, doe wittingly leaue that, which they and their Ancestors had gotten, as the reward in this life of their vertues, to be the future Fuell of all inordinate Desires & Bestiall sensuality, which in their providence they could willingly otherwise haue disposed of.

All which I doubt not but to make cleare to the impartiall Reader: prouing by the Law of God & Man, that a Fathers freedome is such, that hee may *Lawfully* and *Religiously* giue his Lands & Goods, or other his Fortunes, to any of his Children, for the preseruation of his Name, and comfort of his Posterity, without all scruple, as right Reason, or the better Deserts of a Sonne shall perswade him, void of all tenderneſſe or blindneſſe of Affection, which oftentimes leads a Fathers Will, & corrupts his Vnderstanding: so as he be true Lord thereof, not tied by consideration of Mony receaued, or Contract made by Marriage of his Sonne, which may alter the case, and make the Sonne Lord, and the Father to haue but the vse only during his life, as all our common Lawiers well know. In which case, we also haue experience, that our Law permits many times to alter the Title, and to vndoe what by former times was held not to bee controlled. But of this point I will not treat. Only I meane

to

to argue, whether a Father possessed in Fee-Taile, may in law and equitie, vpon the former considerations, make any child which hee hath, his Heire, leauing to the rest a competency; and doe an Act which according to Equity & Religion may stand good and valuable.

In this my present Discourse let not any expect many Quotations of Authors; for I never read any of this subject. What I bare away of my friends Conference, I will set downe; and what other Reasons my vnderstanding shall afford; which I hope shall proue so Demonstratiue, that they shall bee of Authority sufficiēt * to satisfy any Reader; or *incite* some better Penne to treat of the same more largely and substantially; and lastly and chiefly, to cleare some of my Worthy Friends from those imputations, which I finde the Ignorant to lay vpon them. Which done, I shall thinke my Time and Paines well imploied.

* Tis one thing, to convince an error: another, to make men forsake it: A third, to win them to the truth. vid. pag. 117. 2. part of divine Essence & Attributes, by Reverend D. *Iackson*, worthily honord with the Elogie of an *Incomparable writer*; by M. *Pinke* of pious memory. See his Triall of synceritie: serm. 4. p. 57.

CHAP. 2.

That the grounds of all good Constitutions being in Nature, yet she, neither before, nor after the Law of Propriety established, did command, that All should be left to any one, more then to another.

SUch are the wise and temperate Workes of Nature, † that nothing is done by her rashly or vnadvisedly. For though in the Infancie of

† Natura, Diuinitatis fulgor. Valles. de sac. phil. c. 1. p. 22.

of the World, ſhee had an invincible power to produce all effects which then had their Originall in her: yet, being ſtudious to pleaſe Man-kinde not only with variety, but alſo with raritie, ſhee ſucceſſiuely diſcouers & daily diſcloſes to the ſearching Wits of the World her Secrets, as Time and Place either hath or doth daily beget Occaſion; ſtill as it were keeping in ſtore her heauenly Treaſure, till Mans neceſſitie beſt moues her Liberalitie.

For what can the Wit of man deviſe, or what doth Time or Art make known which good is; that Nature, from the firſt time ſhee beganne to worke, hath not in her (though to her ſelfe only knowne) the ground thereof, either to produce the particular or generall effect, which wiſely ſhee left to bee tempered, according as the Reaſon of Man (whoſe glory ſhe pretends) ſhould thinke fitteſt to giue the Forme, as Time, Place, and the nature of the Thing ſhould require?

For though Marriage, as it is a conjunction of Man and Woman, containing an inſeparable ſocietie of life, be of Nature it ſelfe, and had its Originall in the ſtate of Innocence, which (as Divines & Canoniſts hold) was vndoubtedly ordained for Iſſues ſake, whereby a Lineall ſucceſſion was alſo intended: yet, vntill neceſſity enforced Man to make Diviſion of the Bleſſings of God & Nature, the Claimes and Rights which follow Lineall ſucceſſion to Inheritance, were not diſcouered. For all *communicable* things being common amongſt Men, many Ages were numbred from the Worlds beginning,

beginning, before any man laid proper claime to any thing, as due to himselfe alone. Whereby it well appeares, that hereditary succession, or Title to a Parents Lands or Goods, could not then be in vse, or so much as thought of.

This, I perswade my selfe, was the Law of *Nature vndepraued*. Which I incline my Will the sooner to credit, because I find that all sorts of people, as well Christians as others, who haue perfection in Naturall society, or a perfect and Religious life in a Naturall and worldly conversation of Mē, haue and doe daily imbrace this naturall and †blessed Community. † See Acts 2. 44.

Which happy Law of Nature (as I haue said) for many ages endured, & without doubt had longer continued, had not sinne (which breakes all vnion, and depraues all Naturall perfection) gotten such dominion in the minds of Men, that in Naturall Equity all things could not longer bee vsed in common.

For as some being possest with an insatiate desire to get, rule, and raigne; sought the oppression of others, by taking from thē that freedome which Nature had giuen them: So others giuen to sensuality and idlenesse, sought to liue of other mens labours; whereas by Natures lawes every one ought to liue by his proper industry, within the rules of Iustice and Honesty. Whereupon naturall Reason perswaded, that all things being divided, every Man should know his owne: otherwise, no peace or concord could be maintained in Humane society. For

all things being common, the way lay open to every man at his pleasure to abuse others, & as it were to rob them of God his Blessing.

Hereupon, Aristotle judged the Division of all worldly Goods, to haue been agreeable to the law of Nature, which the precept of our Decalogue seemes to approue, *Thou shalt not steale.* For the Law of God is never contrary to the Law of Nature: neither doth Nature ever contrary it selfe, though some may perhaps thinke that herein she hath. For albeit at the Creation of all things together with Man in the state of Grace, a fraternall and amicable Community was intended: yet was it not so absolutely resolued of by Nature, but that by Necessity (I meane by the fall of Man from Gods Grace) she did dispense with this Law, and left free to Mans choice to embrace, vpon her warrant, either the One or the Other, as best might fit the Time, Place, and Natures of Men, which ever since the World began, haue giuen occasion of making of all Lawes.

Whereby we see, that though Nature giue the grounds to Lawes, yet Mans vnderstanding still giues the particular Forme. For Nature creating Man, gaue to him those worldly blessings to vse well, with Warrant either to hold them in *Common*, or in *Proper*, as reason from time to time could best persuade his Will.

But, when Reason and Will had agreed, that it was fit that every Man should enioy his Part in Proper; Nature moued Man further, and told him,

that

that now he might lawfully think on his succession; and not only liue in his species, but breath, as it were, to the Worlds end, in a lineall Posterity by honorable Deeds and Vertuous Acts; with which Desire, Nature, as a wise mother, so inflamed Man (her Noblest Child) after his Fall from Grace, that some Men by Natures light only, haue done Acts almost aboue Nature; and none haue hardly beene so base, but desirous to liue, and leaue an honorable memory behind them.

Which that they may the better doe, Nature hath not only giuen them power to leaue their wel-gotten Wealth, but in a manner their habituall *Vertues to their Issue; in which, this worldly Honor (the Soules worldly life, and Vertue's temporall Reward) may liue free from all-killing Time. Yet, did shee not then by any Command, leaue it to any one in particular, but giuing a generall suggestion of the Fitnesse of the Thing, left the Forme to their best Discretion. For had shee not done so, all Nations had beene tied to obserue one Forme, in leauing their goods and Fortunes to their Posterities; for Nature being One, without change to all, of necessity prescribes no binding Rule to any in particular, but to all in generall; no man being able to say; This, Natures Law commands me to doe, & yet binds not any other to doe the like. Which is euident in the Matter of Succession, or Claimes of Inheritance; no one Country obseruing the Forme held by another; or tying it selfe without controll to obserue its owne, as I shall hereafter declare.

*They which are descended of ancient Nobility, haue in them an implanted compleat Generosity (or vertuous Disposition) αὐτόφυτον, καὶ ἀφῃρῆσθαι τοῦ ἀρετοῦ. Dio Cas. Hist. Rol. 44. ex Orat. M. Antonii.

Consule Clariss. V. D. Zouch, de Iure Feudali. p. 18. &. 21.

For albeit (as I haue said) the Conjunction of Man and Woman (which we call Matrimony) together with the Desire of Issue, be of Nature, from whence also are sprung not onely a Division of the Goods and Fortunes of this World, but also a laudable Desire to preserue a Family and Name, by the ordination of Heires to well-gotten Possessions; yet did Nature never set down as a Law, that those Fortunes should be left to the Elder Brother or Younger, or to any One in particular; or to All; but to whom the Father, being true and free Lord thereof, should best deuise by Will guided by Reason. For it was never yet averred by any sound Diuine, Philosopher, or Lawyer, that Nature makes immediatly Heires, but Men, whom the positiue Lawes of every Country ordaine by that Forme and Power of Law, where such an Act should bee done. And this is (I presume) without controll, what the Law of Nature commanded touching the Matter in Question. Next, let vs see, what the Lawes of God doe command.

CHAP. 3.

That the breach of some written Lawes of God, vpon warrant of the primary Law of Nature, is without sinne: & that therefore, there can be no such Right in Primogeniture, which is not in the Fathers power to auoid, though there were a precept to the contrary, as there is not.

IF Nature, being taken for the principal & all-producing Cause of the whole Frame of the Vniverse.

verſe, with all Creatures therein, being nothing elſe but the working Will of the Higheſt and firſt Mover (as Diuines & Philoſophers hold) then ſurely muſt Natures Law bee his Will, which hee cannot contradict or counter-mand, except hee ſhould bee contrary to Himſelfe, which he cannot. For, what is in God, is God, therefore Conſtant and Immutable. Out of which Principle, it is eaſily proued, that if the Law of God teach that which the Law of Nature hath ordained, the Right of Inheritance cannot be tied to any other perſon or perſons, then to thoſe which the Fathers Will approues, according to the Power giuen him, by the Lawes of Nations where he liues. Which Power deriued from Natures Law, cannot erre from the Law of God. For whoſoeuer ſhall conſider but of Gods Commandements giuen to Man, ſhall well find, that God thereby hath ſtill ſeconded his former Ordinances giuen by Nature. For ſo long as Man-kinde liued in a ſort, after the Innocence which Gods Grace in his firſt Creation had wrought in him; God gaue him no other Law: But when as by ſinne thoſe ſparks which remained after his Fall, were quite extinguiſhed, he gaue him New Lawes, yet agreeable to Nature.

As for example in our preſent Affaires: When Man had made by Natures priuilege partition of Gods and Natures Bleſſings, then God ſaid to his People by the mouth of *Moſes, Thou ſhalt not ſteal: Thou ſhalt not couet thy Neighbours houſe, his Wife, his Ox, his Aſſe, or any thing that is his.* As alſo,

Thou shalt not kill. Which with all other his Commandements teaching what sinne is, are agreeable to the Law of Nature, yet are dispensed withall, as farre as the Lawes of Nature euer permitted. For, though that the expresse Command of God bee, thou shalt not couet any thing that is thy Neighbours, nor kill; yet, in some Cases, Both may lawfully be done. The one, in extreame Want of present Food: the other, in defence of Life & Goods. In which, the Law of God, is good by the Originall Law of Nature, which made All for the sustenance of Man, and gaue leaue to defend Life with with the losse of anothers Blood, yea Life, if otherwise it cannot be. Vpon which Ground, I argue thus.

Suppose the Law of God did at this present command (which Indeed it doth not) that the Inheritance should be left to any one particular Person, and namely to the Elder-Brother, yet in some Cases it would not binde the Father to obserue it. For as in the former Commandements, vpon some considerations the Commandement may bee dispens'd withall, so in this. For it is not sufficient to be the Elder-Brother, or the neereſt in Blood to gaine an Inheritance in the Case which I haue now proposed; for other Circumstances must concurre, which if they be wanting, bare propinquity or ancienty of Blood may iustly be rejected: & he that is second, third, fourth, fift, or last, may lawfully be preferred before the First, and this, by all Law, Diuine and Humane, and by all Reason, Conscience,

ence, and Custome of Nations Christian.

For if it should happen that the next in Blood, should be a Naturall Foole, or a Mad-man, or being taken by the Turkes or Moores in his Infancy, and educated in their Religion, would maintaine the same: or if any other such Accident, ministring cause of iust Exception should fall out; is it likely that any Law would allow, that such a man should be admitted to the Inheritance? Wherefore how idly should they talke, that would haue it to bee his Birth-right, or that God & Nature had made him Heire; since neither God nor Nature doth immediatly make Heires, as before is declared. Vpon which Ground, our Common Lawyers say, that No Heires are borne, but Men and Law make them.

I confesse, that in Holy Writ, great * Respect is had of the first-begotten, and a Blessing is held to come to Parents thereby. But this Blessing I presuppose to bee, that thereby the Feare of sterility was taken away, which in the Old Law was held to be a great Punishment of God; & in respect thereof, Parents had of themselues, and by the Nationall Lawes & Customes, a great Regard of their First-begotten, and preferd them to the better part of their Possessions: yet, not by any Command from God, as a Precept to binde his Elect people vnder paine of sinne. For had any such Law bound them vnder such a Penalty, then should it binde all Christians now, on the same Conditions. But we see it by Generall Practise of all Countries to be otherwise:

* In allusion hereto, the Church Triumphant is stiled, The Church of the First-borne. Heb. 12. 23.

wise. Therefore it followes directly, that it was not Gods Command, but a Nationall Law. For God both is, and ever was One, without change to all his People, & so ever were & will be his Laws Positiue, made for them that truly worship him.

The Claime which *Esau* made to his Birth-right was not by the Law of God, as some ignorantly affirme, but by the Lawes of his Country. For, should the Divine Law haue commanded it, it had been sinne in his Mother and Brother, by Cunning to haue got it from him. Neither could the Father or the State wherein they liued, vpon no just cause knowne but to God alone, without sinne haue setled the same vpon his Brother *Iacob*, as it was, and as it may seeme, by allowance from God, and as it may bee judged by the successe. Whereby it is thought, that God ordained it, as a Punishment of the One, and Blessing of the Other: which by the permission of sinne to bee committed, God never doth.

*Iacob prælatione diuinâ & primogenitutam & benedictionem promeruit (Ita Eximius Præsul. D. Episc. *Ciceſtr.* Apparat. I.)

Neither did the Nationall Law or Custome of the Iewes (as it is said) absolutely command the Father to leaue to his first begotten, all, or the greatest part of his Goods and Fortunes. But in case he died, not disposing thereof by Act in his Life, or Will at his death, then the Custome † of the Nation, laid a double Portion on the Eldest or First-begot, providing for the rest proportionally.

†Viz. Grounded on the Right of Primogeniture. See Deut. 21. 17. and the *Geneva* note there.

By all which you may collect, that neither the Law of God or Man, in this case, commanded that *Esau* should haue the Inheritance; but Power to do the

the contrary, was giuen to the Father in his Life-time, even by the Law it selfe. For many Divines hold that *Esau* selling his Birth-right (as it is termed) sold not Goods, or Lands, but his Claime of being * High Priest after his Father, which by Custome was to come to him being his Fathers Eldest Sonne. For which Dignity God seeing him vnfit, permitted him to passe away his Right in his Fathers life, as we read in Holy Writ, and which God seemed to approue. And thus I hope this Objection is answered.

Further, if it were true, that the effect of Eldership were such by the Law of God, as some passionately defend, that is, that the whole Inheritance should of Right pertaine to the Eldest; then sure it followeth by good Consequence, that there should, nor ever could, haue beene but one Temporall Lord of all the World. For of Necessity *Adams* Inheritance should haue gone still to the next in Blood: which how absurd it is, let all men judge.

Moreover, we read, that *Noë* hauing three Sons, and the whole world to leaue vnto them, gaue it not All to the Eldest, but equally divided it among them & their Posterity, as all Authentike Histories doe witnesse.

Againe, God requiring Obedience of Children to Parents, promised a Reward, saying, Honor thy Father and thy Mother, that thy Daies may bee long in the Land which the Lord shall giue thee; Which surely was not spoken to one, but to all the Children of men. For with God there is no Exception

* At first, Fathers & their first borne after thē, were both Kings & Priests in their owne houses: but in Moses daies, this Prerogatiue of Primogeniture ceased: *Aaron* and his Progeny being inuested in the Priesthood, & *Moses* being as *King*. Deut 33.5. (As judicious Mr. Godwyn in his Moses and Aaron. Lib. 1. c. 1)

tion of Persons, but as a just and pious Father, hee giues every one according to his Deserts. *Terram autem dedit filiis hominum.*

We read also in Holy Writ, how the Prodigall Sonne being weary of his Fathers house, came to him and boldly said, *Pater, da mihi portionem substantiæ meæ quæ me contingit:* This child of which the Gospell speakes, was the younger Brother: yet you see how boldly he said: Giue me that Portion of Goods which belongs to me. By which words it is evident, that a Division or Partitiō of a Fathers Fortunes was then * in vse: and that any child as well younger as elder had power by law to demand his Legitimate, or Childs part, according to the nature of the Civill and Canon Law, as you haue heard. For the words following in the sacred Text are these, *Et divisit substantiam illis.* And hee divided vnto them his Living. Thus wee see, that the privilege of Eldership was then excluded; which now in our Country by Custome only, is gotten to be of such Force.

Luk. 15. 12.

* As is further evidenced Luk. 12. 13. where our Saviour was willed by One, to require his Brother to divide the Inheritāce with him. Which was the suit of a younger Brother (aggreeved at the churlish Iniquity of his Elder.) *The Iudgement of that Illustrious & Religious Divine, M. Iohn Hales: the most exquisite Illustrator of Chrysostome, published by the Right Noble Knight Sir Henry Savile, now in Glory.*

But it may be objected, that this was a Parable only (as indeed it was) and cannot bee alleaged as Law. True it is; yet it cannot be denied, but that all Similies, Parables, or Examples, which ever were alleaged by the wise and learned to represent the Truth, haue euer beene derived from the custome and nature of Things, according to the knowne Truth in that time, and place, and to those persons to whom the Speech or Discourse is directed. And shall we thinke that our Saviour Christ being Wis-

dome

dome and Truth it ſelfe, treating of ſo important an Affaire, as he did then in the Goſpell, would vſe an vnknowne Diſcourſe, or ſtriue to make the Truth appeare to our weake Vnderſtanding by a Parable which in Equity could not bee true? No ſurely. For it appeares by *Solomon* his ſucceeding his Father *David*, that *David* had power by the Lawes of God and Man, to giue his Kingdome to the worthieſt; which hee deeming to be *Solomon*, gaue to him his Kingdome, though hee was the youngeſt Sonne.

Neither was there any juſt exception made againſt *Adonias* his Eldeſt Brother, or againſt ſome other of his Brethren, why they ſhould be diſinherited by their Father *David* contrary to the common practiſe of thoſe Times in ſetling Inheritances. But the onely knowne reaſon of this Act in Scripture, was *Davids* Promiſe, made to *Solomons* Mother, together with her great Entreaty made to *David* to performe it. Which ſurely he would not not haue done, had he not found a lawfull Power in himſelfe, to haue executed the ſame. 1. Kings. 1.

Laſtly, it is invincibly proued out of the Booke of *Iob*, who was contemporary with *Moſes* (by atteſtation of judicious Theologians) that there was in thoſe Times and Countries no ſuch Law or Cuſtome, that the Eldeſt ſhould play at Sweep-ſtake, and all the reſt be left to the foure Windes: for it is expreſly recorded in the laſt Chapter, and the 15 Verſe; that *Iob* gaue his Daughters, Inheritance *among their Brethren:* Which comes home to the Iob. 42. 15.

point in Queſtion, and irrepliably evinces a Fathers Power and Right to make ſuch a Partition of his Eſtate among his Children, as vpon emergent occaſion, he ſhall judge expedient.

And thus much concerning what may bee ſaid out of Scripture, or Law of God, in our preſent Queſtion.

CHAP. 4.

That Nations beginning to deviſe ſundry Formes of ſetling Inheritances, the Romans eſpecially therein reſpected the free power of Fathers: the right of Children to their Fathers eſtates, beginning onely at their Fathers death.

HAuing now declared what the Laws of God and Nature determine of our preſent Queſtion: we intend to examine in breefe, what is commanded by the Law of Man, as well Civill, of other Nations; as Common, of our owne Country. And firſt concerning the Civill Law.

Though all Law, which ever had but the Name or Credit of Law, doth ſurely deriue her Originall from the Law of Nature, wherevpon *Cicero* many hundred yeares ſince ſaid, that the Ground of all Law-making, is to be taken from the chiefe Law, which was made before any Law was written, or City builded: yet doe they differ much in Forme. For as it is no Law, but Tyranny, which wholy diſagrees with the Law of Nature, as *Ariſtotle* ſaith:

ſo

so if it agree in All with the Law of Nature, without limitation or difference, it must of Force be the very Law of Nature it selfe; and not the Law of Man. Which surely is nothing else, then a Temper or Forme of Equity drawne by right Reason from the Grounds of Natures Laws; according as Time, Place, and the Natures of Men either gaue, or shall giue Occasion. For though new Lawes bee daily made of new and seuerall Accidents; yet all are agreeable to the old and ancient Grounds of Reason in Nature, the Grand-Mother of all Law. Wherefore hauing before specified what the Law of Nature is touching the Point in Question, I shall now declare, what Temper or Forme hath thereto beene added by the Civill Lawyer.

After that Man-kinde was inforced (yet by Natures Warrant) to make (as I haue said) a partition of the Blessings of God and Nature: and that Men were possest by the same Right of Goods & Lands which they desir'd to leaue to Posterity; Law-makers, and in particular, the Civilian, deviſed by little and little certaine Formes of Inheritance, and ordination of Heires, at first somewhat rigorous, giving to Parents power of Life & Death ouer their Children, and a free disposition of all their Fortunes to any one of them in his life: but dying intestate, then all which was the Fathers, to be equally divided among the Children, as well daughters as sonnes. Which Constitution was afterward vpon good grounds altered: the Father being bound to leaue every child a Portiõ, which the Civilian cals a

Legitimate, Others a Patrimony; which at first, was the eight part of the Fathers substance, equally to be divided (as hath beene said:) which after a while seeming litle, the Law commanded that the Fourth part should be left without Controll: except vpon just cause the Testator did disinherite him or them who by course of Law were to succeed him: stil vpholding the former Lawes, that as well daughters as sonnes, should equally succeed their Parents dying intestate; Herein assigning fourteene causes why an Heire might lawfully be disinherited.

Many hundred yeares passed frō the establishing of the Civill Law, before it was ordained by force of Law, that Parents should leaue a Childs part (as it is now called) or that they could not disinherit, without expressing the cause thereof in their last Will: yet, in all this Time, nor till this present Day, the Privilege of engrossing all by *Primogeniture* was not once heard of, or at leastwise not admitted, but rather excluded; as by many Text in the same Law it well appeares: The End of the Imperiall or Roman Civill Law, being only to maintaine Morall Iustice in three short Precepts; *Liue honestly. Hurt no Man. Giue every one his owne.* So that hee who obserues these three, fulfills this Law, yea the Law of Nature, whence this Law is deriued. Now, if any Brother can proue, that his Father either in his life by Deed, or by Will at his Death, disposing of his Goods and Lands no otherwise then I haue declar'd, doth no act against these three; why should he not content himselfe, either with the Fruits of his

Fathers

Fathers loue, or his owne Deserts what ever they bee.

True it is, that in Naturall Iustice, children during their Fathers life, haue *Ius ad rem*, not *Ius in re* to a Fathers Goods: Wherevpon the Law calleth them *quasi bonorum Patris Dominos*. Which their Right only takes effect after their Fathers Death. For during life, he hath power to alter, alien, sell, & giue, as it shall please him, according to forme of Law: but being dead without Will, or disposition thereof, they fall vpon his children, according to the Law of Nations. This Law embraceth a two-fold Iustice, the one in Exchange, the other in Distribution. The first hath not to doe with our cause: The other * rather commends then condemnes a Father, who vpon good Occasion, that is, for the bad Demerits of his Eldest Sonne, and for the preservation of his Family, shall giue or convey his Lands or Goods to the Younger. For the Nature of distributiue Iustice, is not only to giue proportionally to the well-deseruing: but also to forbeare to place Benefits vpon any one who shall abuse them: or vse thē to any other end, then to that good for which they were lent, and hee shall leaue them. And this is *Ius suum vnicuiq; tribuere*. For no man can giue or sell his Goods to an evill end, or to any one, who he assures himselfe, will vse them to the Dishonour of God, or the Wrong of those who shall liue with him, or by him: whereof I will treat more in the seventh Chapter, being then to handle, what a Father may in Conscience doe or not doe, in

* This warrants not the injurious Abdication of vnnatural Parents; (irremediable by the common Law: as is also the oppression of Orphans by lewd Step-fathers and sharking Executors.) See D. Ridleys View (republisht by a learned Student of the Royall College of Christ Church Oxon. Ipart. 4. Sect. 1. & 2.

in our present Question, with sinne & without sin. And thus much of the Civill and Canon Lawyers Averment of an Elder Brothers Right to his Fathers Fortunes.

CHAP. 5.

That the present custom in our Country of giuing All, or almost All to the Eldest, was never so begunne, that it meant to exclude iust Remedies for such Evills, as should grow out of the abuse of that Custome, when it may make Fathers guilty of their Sonnes faults, and of their Families ruines.

I Haue purposely reserued to treat of the Lawes of our Country in the last place, because (I assure my selfe) they are of most force to sway the Point in question. For many things may be permitted by the Lawes of God and Nature, and yet contrarily prohibited, or practised by course of Law, in severall States of the World, as the Law-makers and Customes of Countries allow or command. I confesse, the generall practise of our Time among Parents, is to leaue either All or most part of their Lands to their Eldest Sonne. This questionlesse (as hath beene said) was first deuised in former Ages, for the preservation of a Family, and to raise One who might bee a Comfort to his Brothers, Sisters, and Family, and in whom his Progenitors Vertues might liue to the World. And I wil not deny, but the Partition of Lands, may reduce in the

the end, a goodly Estate to Nothing, or to so litle, as it may be like an Atome in the Sun; yet I finde in Naturall Reason, that, *ex nihilo nihil fit*, or at lest, that

Haud facilè emergunt, quorum virtutibus obstat
Res angusta domi.----

But if Men faile of those happy Ends, to which this generall Custome should guid, then could I wish, that they would not vse That for their Destruction, which was meant for their Preservation. For who sees not, in these our Times, many vnbridled youths so violently carried away with the humour of spending, that they neglect Brother and Sister; yea, bring to extreame misery their Naturall Mothers after their Fathers Death, by their vnthriftinesse. What help for this hath Law left vnto vs? No meanes to bridle these vnruly Colts, if they become Heires according to the custome of our Time? No truly. For some starting-hole will bee found, to vnty the Knot which a Fathers care once tied. How then? Must many a hopefull and well-deseruing Brother and Sister, bee left to the Mercy of this Whirlewinde? There is no Necessity. For our Law hath giuen Power to a Father, and Free-will to dispose of his Owne, according as Reason shall guid his Will, without all obligation to his Heire. Besides, this Custome takes place only after a Fathers Death, if hee dispose not what is his, by Deed in life, or by Will at his Death. But lest my Words bee more generally taken, then they are meant; I meane those Fathers, who are possest of

Cessante ratione, cessat Lex,

their Lands in Fee, or Fee-taile: that is, are absolute of themselues, and haue not vpon good Consideration conuaied their Lands from themselues. For all our Lawyers agree, that such Parents may alien, sell, and giue, by power of our Law, their Lands to whom they will, without respect of Person or Eldership.

But may some say, the Custome is otherwise, & this Custome is a Law. True, it is the Custome: But let vs see, whether it binde *sub peccato*, or as a Custome, which rather invites then commands. There was never any Command to tye a Father vnder a Penalty which admits no limitation; but it was euer left indifferent, and then only to take place where former Prouision according to course of Law is not made. Then surely a Parent is free from this deuouring Custome, and may considerately prevent what Evill it may bring to his posterity: yea, Reason commands it should be so. For, *Interest Reip. vt quilibet re suâ benè vtatur*: It concernes the publike State that Men be *Good Husbands*, saith the Ciuill Law. For if a Man can neither sell, nor set, much lesse can hee giue any thing to another, which he thinkes in his Conscience, will vse it to the Dishonour of God, and the Ruine of himselfe, or others.

Diuines hold, that it is not lawfull to sell or let a house to any that hee thinkes assuredly will make thereof a Stewes, or to sell, giue, or lend a Weapon to a man who intends therewith to doe murther. Excommunications are imposed on them, who sell

Armes

Armes Offensiue, or Defensiue to *Turks*, though they bee not assured, they will vse them against Christians.

Thus, we see, the Rule of Conscience, not onely commands a man to vse wel those Fortunes which God hath bestowed on him; but forbids him, either vpon Affection, or Gaine, to part with them to others who will abuse them, lest hee partake of others sinne: which a Parent may doe after death, who leaues his Lands to a desperate Vnthrift. But, what Religion and Conscience commands, shall be declared in the following Chapter. In which, vpon Principles drawne from the former Conclusions, shall be argued, what sinne may bee contracted by the parting an Estate among Sonnes, or by disinheriting an Eldest son vpon just Cause; & to whom the Father is onely tied by the Custome of the the Countrey, without Obligation of Promise, or Contract in Marriage, which may alter the Case.

CHAP. 6.

That it is no offence before God, for a Father being Tenent in Fee-simple, to disinherit the Eldest, or to parcell his estate vpon cause: and that extreame vices of Heires Apparent, together with the fewer meanes which younger Brothers haue now to liue on, then heretofore; cryeth out against the contrary opinion.

THE Right of these *insociable Inheritors*, of which wee now treat, may grow (as I conceaue) from three Titles or Claimes, which they may pretend to a Fathers Inheritance; and whereby it may be deemed (as they thinke) sinne in a Father, vpon what Desert soeuer, to barre them of the said Right. These three Titles, are *Purchase*, *Custome*, and *Entaile*. Of each seuerally. And of the first, which is *Purchase*. Surely in the Iudgement of the Good & Learned, there is no question in Law, or Conscience, but that a sonne joyned Purchaser with his Father, hath *Ius in re*, and by Equity must, surviuing his Father, inherite such Lands as were purchased in their Names.

Now of the other two, though it be as cleere as Noone-light, that a Lord in Fee-simple, or Tenent in Taile, may sel, or giue by course of our common Law, at his pleasure all such Lands held by him, in that kind, according to those formes of Law, which the learned in our Lawes haue, and can set downe:

yet

yet there seems to arise a great Difficulty, how such an Act or Acts may in Conscience be executed. I haue heard some say, in this our Case, *summum Ius, summa injuria.*

Of these Points therefore I will speake (*Salvo meliori judicio*) what may in Conscience, vpō good and just Occasion giuen by the Sonne to his Father, bee put in Execution. It is well knowne to all Diuines (as I haue said) that Holy Writ hath not prescribed any direct or precise Forme to the Children, of God whereby they are bound in Conscience to dispose of their Lands and Goods, but hath absolutely left them to the Customes of their Country, where any Act of that kinde shall be executed; only as confirming all Formes of Deuises which by publike Consent, and Authority, either haue, or shall in rightfull manner bee deuised or ordained.

Out of this Ground and others prementioned, let vs examine, whether a Father parting his Fortunes by Power of Law, and on just Cause, shall do a wrongfull and sinfull Act, as some would make it. I confesse, that every Act in it selfe, or by circumstance evill, and which vpon no occasion can be justified, is both before God and Man, sinne, and by no meanes to be executed by a Christian. But that the parting of an Inheritance, or Disinheriting of an Eldest Sonne, vpon *just, and evident cause of incapacity*, & according to *Course of Law*, is an Act of *that Nature*, doth not appeare. For I finde not, that either the Law of Nature or Grace, nor yet

the Lawes of Man, Common, Civill, or Canon, ever forbad such Acts, whereby sinne may bee imputed to those who doe them on good Considerations. Sure I am that the Canon and Civill Law are so farre from forbidding them, that they command, as a Thing in Equity, the Father either to divide his Inheritance, or allow him according to his Affection, to giue to one more then to another: yet with this Proviso, that hee who hath the lest, haue his * Childs part; which the Law doth also assigne, except on just desert he disinherit any one: which at this day may, yea must bee by Will, with the cause of Disinherison therein specified. Of which Causes the Imperiall Lawes haue set downe foureteene, as may well appeare to them who are desirous to vnderstand more thereof. So it is evident, that by these two Lawes, no sinne can grow vpon such Acts, being done vpon their Warrant, and vpon such Consideration, as is formerly deliuered.

* Or lawfull Portion: See pag. 61. of Dr Ridleys View illustrated by the judiciously-learned Mr *Gregory*.

As for the Common Lawes of our Realme, sure it is, they allow no lesse, and with a greater Priuilege. For a Man may by this Law, giue his Lands held in Fee, either by Deed in his life, or by Will at his death, to any of his Children; yea to a stranger, without rendring a Reason why he doth so. True it is, that a Father not disposing thereof in such sort, Custome giues the whole Estate to the Eldest: yet in some part of our Countrey, the youngest Brother, by custome is to haue the Land, held by some kind of Tenure, if the Father in his life-time dispose not thereof.

As yet therefore I cannot see, how any sinne is committed, or contracted by the former Acts, being neither done against the Law of God or Man, as we haue proued: vnlesse it should be said to bee sin, not to leaue it to the Power of a Custome: which cannot be, except the former Law shall bee proued not to be of Force, and not to be executed; which can no way be done: Though I must confesse, that the Custome of leauing the Child-estate to the Eldest sonne, hath of latter Times beene much imbraced by our Gentry, for the preservation of their Families, for which it was invented. For the Times haue so ruled, that Men of sort, being either idle, or not possest with a couetous Humour, haue contented themselues with their Fathers Fortunes, and preferr'd their younger sonnes by those meanes which the Times did afford: namely, by many commendable Courses; as either by service of Spirituall and Ecclesiasticall Persons, whereby many were raised: or by professing a spirituall Life, whereby the younger Brother hath oft-times in Honour stept before the Elder. But this manner of Life, is not so gratefull to our English Gentlemens Natures, as anciently it hath beene.

"The Trade of the Merchant, the Military pro-
"fession, the Courtiers life, advanced many more,
"then now they doe; and lastly, Elder Brothers in
"former Ages were (generally) of better Temper
"in spending: and if they had no humour to get,
"yet had they a care to keepe what was left them:
"and ever held themselues bound by Religion to
provide

"provide for their younger Brothers and Sisters "left to their Disposse, which now is far otherwise. "For some Elder Brothers are found to spend "more in a yeare idly, then would prefer or main- "taine a whole Family Nobly: and to suffer their "Brothers & Sisters to *shift*, which as these Times "shape, is often-times to liue either *lewdly*, or most "*miserably*:* being forced either to forget their "good Education, or to lay aside all Badges of "Gentry; who otherwise with some *reasonable* "*helpes*, might doe God, their Country, and Fa- "mily much Honour.

* *Strenuè esurire.*

Since we haue gone so farre, let vs see, on what Ground this Custome first hath risen. Surely for the maintenance of a Family, yet led with an Ambitiõ at the Example of Princes, who finding some difficulties in the admitting of many to a Gouernment, and feeling what Inconveniences the parting of an Estate, brought; deuised that One should goverue: sometime the Worthiest, sometime the Eldest was Elected, according as the Order was agreed vpon, and yet the other Brothers were maintained like Princes. And this Custome also among them hath beene broken, without Imputation of sinne: For to goe no further then our late Times: 'tis well knowne, that *Ferdinand* (*Charles* the fift his Brother) being setled in the Empire, divided his Estate. To *Maximilian* his Eldest sonne, he left the Empire, with *Austria*, *Hungary*, and *Bohemia*. To *Charles* his second sonne, *Stiria*, *Carinthia*, and other Dominions. And to *Ferdinand* the youngest, he

he gaue the Earledome of *Tyroll*. All which, if in his life-time hee had not disposed, had come to the Eldest. Also *Philip* the second, late King of *Spaine*, gaue to his Daughter the 17 Provinces, which were *of Right* to haue descended to his sonne after his Death, if otherwise he had not disposed in his life. And this was adjudged lawfull by Graue Divines, otherwise surely they would never haue done it.

But doth this Custome in meaner Degrees work that Effect which it hath done in them? Not truly. For as we haue proued, it is rather the Ouerthrow then the Preservation of many Families. Let vs see withall, whether Families flourished not as much, and more then now they doe, before this Custome was receaued.

Vna dies Fabios ad bellum miserat omnes Ovid. Fast.

Livy saith, that three hundred of the *Fabij*, all of one Name and Family, issued out of *Rome* Gates at one time, on their owne Cost, for Defense of their City: which was done, before this Custome was dream'd of.

In Scotland three hundred of the Name and Family of *Frasers*, Gentlemen, were at one Time slaine in Fight by their Enemies Neighbours: and 140 Gentlemen of one Name in Yorkshiere, waited on their chiefe or principal Man of their House, at that time High Sheriffe. In other Countries, many Noble Families from the Romans downeward, haue continued where this Custome hath beene deemed vnjust, as by their Laws is manifest: whereas in our Country, in these our Times, if there bee one Family in a Shire, which is of three hundred

yeares continuance, very many others are ſcarſe of fiue Deſcents in a Blood.

Why ſhould our Age then, ſeeing the Fruit of this Cuſtome to be ſo ſmall, embrace it with ſuch Zeale as to deeme the Breach thereof, being warranted for Good and Iuſt by the Law of God, Nature, and Man, to be a ſinne? Is it held both lawfull and expedient (in ſome Countries) for the preſervation of a Family, that Degrees of Kindred ſhould be diſpenſed with to marry, contrary to Eccleſiaſticall Canons and the Generall Practiſe, and can it be lawfull before God and Man, for the preſervation of our Goods, to venture our Liues, and to kill a Theefe, who ſhall aſſault vs, and that perhaps for a Trifle, and yet that for preſervation of our whole Eſtate, and perpetuity of a Family, it ſhall bee reputed ſinne, to breake a bare Cuſtome, vnder no Penalty Obligatory, yea alwaies allowed by Law? Never was it heard, that a Cuſtome * was of ſuch force, to abrogate a Law ſo farre, that it ſhould bee deem'd a ſinne to follow the ſaid Law, though it haue Power to diſpenſe with the Law, which otherwiſe to infringe, were ſinne: eſpecially when as the the Law is both more pious and more naturall then the Cuſtome is. For how farre is it from the Law of Nature, and from the Practiſe of Paternall Pietty, the Father dying inteſtate, the Eldeſt ſonne to become Lord Paramount of all his Fathers Lands, & not to be bound by Law to prouide for Brother or Siſter, but at his owne good liking? *Aliud Tempus, alios mores poſtulat.* Men of Vertue, Men of Learning

* *Cuſtomes againſt Lawes, are void by the Ciuill Law.*

Learning & Vertue, both now and in former Ages, in this our Countrey, haue brok this Cuſtome, as the World knows, vpon good Conſideration, & juſt Cauſes; not vpon ſpleene, or falſe ſuppoſitions perſuaded to leaue their Fortunes to Strangers, or to a luſtfull Iſſue, as ſome haue done.

* This Cuſtome is contrary to the iudgement & practiſe of the Primitiue Church: as is cleare in *Salvianus*; who intimateth, that *æqua hereditatis portio* was vſually left by Christian Parents to their Children, and that to doe otherwiſe, were *Groſſe Iniquity*: *Ad Eccleſ. Cath: pag:* 422. 425: *Edit: Oxon: Floruit: A°* 480.

CHAP. 7.

That Fathers being Tenents in Fee-taile, may likewiſe without ſcruple of Conſcience, diſcontinue the State-taile vpon cauſe; and deviſe the ſame at their reaſonable pleaſure.

HAving treated largely, and (as I preſume) proued ſufficiently, that Lands held in Fee-ſimple, may either bee parted, or vpon juſt Cauſe wholly given away to a younger Sonne: I intend now to ſpeake of the lawfull Freedome of a Father in like ſort, and on the ſame cauſes, moued to diſpoſe of his Lands entailed: of which there ſeemes more Doubt then of the former.

Every humane Act, which of it ſelfe is not forbidden by the Law of God or Nature, is to bee judged Good or Evill, Lawfull or Vnlawfull, either by the Lawes of the place where the Act is done, or by Intention of him who ſhall doe the Act. For as the Divine Law cõmands ſomethings

to be done, and other things to bee avoided, vnder paine of ſinne: ſo the third ſort of Actions are left free (by the ſaid Authority) from ſinne; except the Law of Man prohibite thē, & ſo make them ſin: or elſe evill Intention make them (being of themſelues lawfull) to be a ſinne, and vnlawfull; according to that Principle of Morall Philoſophy, *Finis ſpecificat actum*. For as an Act of it ſelfe lawfull, done againſt Law is Sinne: ſo a good Act commanded by Law, yet done with an evill intention, may be ſinne.

From theſe Grounds, let vs ſee, whether the Common Law of our Country, and the Intention of a Father (which are to bee the Iudges of our Cauſe) can allow the cutting off an Entaile, the parting of an Inheritance, or (vpon proportionable cauſe) the diſinheriting of a Son. Firſt it is cleere, that the Act, of it ſelfe, by Law may be done: But whether ſuch an Act bee *ſummum Ius*, which may be *ſumma injuria*, that is the Doubt. What ſhall be the Triall? By other Lawes, it is either made lawfull, or left indifferent. Our Law which makes this Tye, giues leaue to vndoe it without any exception. *Ergo*, to a good End, and vpon juſt Cauſe, it may be done. It will bee replied, that the Eldeſt ſonne, during this Entaile, is *quaſi Dominus*: Yet, hauing neither *Dominium directum*, nor *indirectum*, he, during his Fathers life, hath onely *Ius ad Rem*, and not *in Re*: Whereby no change is forbidden to be made by the Father, according to the Forme of the Law vnder which he liueth, and by which, the ſonne is to make claime, if the Father

create

create no new Estate in his life. For it is lawfull for every Man to dispose of his Owne, as far as the Law shall permit him, if it bee not forbidden by some other Law: but such an Act is not forbidden by any other Law, *Ergo* 'tis lawfull, and no sinne.

But it may bee said, that the Intention of him who entaild the Land, was, that it should not be vntied, or the state changed. I answer: No Act done by law, can be free from Change, further or longer, then the Law that made it a binding Act, shall allow. And it is well knowne to the learned in our Lawes, that every Mans Intention is to be construed according to Law, by which, his Act and Intentions are directed. Wherevpon, *Civilians* say in like Cases, *Valeat quantum valere potest*. Neither is it thought, that any man who convaieth his Lands by Entaile, can intend an Act beyond Law, or desire that his sonne whom he makes Tenent entaile (as our Lawyers terme him) shall in no Case, no not for the preservation of his Family, or Releefe of many other of his Children, haue power to cut of this Entaile, and to be able to alien, sell, or giue his Lands, as Reason, Law, and Religion shall permit. For it may be judged, that hee who doth an Act to a good End, as namely to preserue his Family, will alwaies assent to another Act, which shall with better assurance then his owne, strengthen his Intendment.

To the former Considerations wee may adde, what Inconveniences may follow this Generall Position. For if in conscience the whole Inheri-

to be done, and other things to bee avoided, vnder paine of ſinne: ſo the third ſort of Actions are left free (by the ſaid Authority) from ſinne; except the Law of Man prohibite thē, & ſo make them ſin: or elſe evill Intention make them (being of themſelues lawfull) to be a ſinne, and vnlawfull; according to that Principle of Morall Philoſophy, *Finis ſpecificat actum*. For as an Act of it ſelfe lawfull, done againſt Law is Sinne: ſo a good Act commanded by Law, yet done with an evill intention, may be ſinne.

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To the former Considerations wee may adde, what Inconveniences may follow this Generall Position. For if in conscience the whole Inheri-

tance of the Father, is to come without controle to the Eldeſt ſonne, then muſt it of neceſſity bee inferred, that the Father, without his Conſent, * cannot giue to pious *Vſes, or ſet out for the Advancemẽt of his other Children any thing after his Death. So that if God ſhould bleſſe a Father with many children, and croſſe him with as many Misfortunes; his other Children, and all other his charitable Intentions ſhould be provided for only at his Sonne's or Heire's curteſy. Which how *abſurd it is, all men know. For herevpon all Donations to pious Vſes, and to younger Brothers for their preferment, may be called in Queſtion.

* *Agens per medium, eſt minus efficax in agendo.*

* Da quæ nõ potes retinere, vt conſequaris ea quæ non potes amittere.

* *Pediſſequa enim plerumq; novi honoris, eſt Arrogantia* Salv. Ep. 2.

It is an ordinary thing in theſe our Times, when the Land is left to the Heire Generall, to alter the Eſtate, if the Land ſo cõvaied ſhal come to Daughters, and to leaue it to a Brothers † Sonne, or ſome other of the ſame Name (though peradventure many Degrees remoued) for preſervation of the Name and Family. If this may bee deemed lawfull, and no ſinne, being done againſt a well deſeruing Child, for whom, Nature and her Deſerts plead her worthy to be her Fathers Heire: then without all compare, if the preſervation of a Name and Family, may juſtly be labour'd for, according to Power giuen by Law of God and Man; the ſame may be lawfully acted, againſt a debauched Heire, who in any reaſonable Mans Iudgement, is likely in his ſhrowd to bury the Memory of all his Anceſtors Vertues, which ſhould liue in him, and his Progeny, as his Progenitors did in theirs.

† Hebrewes call a Male-Child *Zacar*, a memoriall: becauſe the Fathers memory is preſeru'd in the Sonne, See 2. Sam. 18. 18

It

It is neither new, nor ſtrange, in the Practiſe of our Times, in Cauſes of this Nature, to overthrow intended Perpetuities, and by Act of Parliament to giue leaue vpon ſome good conſiderations to ſell lands, which otherwiſe by no Lawes can bee ſold from the Heire, the Father being but Tenent onely for terme of life. Which ſurely by no Power vnder God could be done, were the Thing in it ſelfe, vnlawfull and ſinne; for * *Omne peccatum eſt Diuinitatis injuria*: Whence may bee argued *à Fortiori*, If power may be giuen to a Father being Tenent for Terme of life, to ſell his Sonnes lands, only to pay his owne Debts (peradventure idly made) though it be to the Overthrow, or extreame Diminution of his Family; becauſe Naturall Equity doth will, that every one ſhould be relieued with his Owne, (for ſo it may bee deemed, though in loue to his Child he hath paſſed the Eſtate, yet ought hee to be therewith preſerued from Thraldome in his Neceſſity:) Which if it be ſo, (as confeſſedly it is) how reaſonable a thing, yea how commendable, and *far* † *from ſinne* is it, for a Father truely Lord of his owne, without all Tie of Law, Divine, or Humane (as I haue proued) to diſpoſe his Lands, to the Honour of God and Comfort of his Family, to a Younger Sonne, *when in all probability, the Elder will neither vſe it to the One nor the Other, but rather, to wallow in Riot and Senſuality.*

* See Salvian ad Ecc. Cath. l. 4.

† So *Salvianus: Non iniuſtè teſtator ſapiens non relinquit, quod hæres impius non meretur.* Ad Ecc. Cath. l. 3.

CHAP.

CHAP. 8.

That Vnthriftinesse is one knowne name of many hidden sinnes; and is alone a sufficient cause of disinherison; proved by the Law of God and Man.

HAuing vpon good Consideration enlarged my selfe beyond my first intention, I haue resolu'd, vnder my Readers Favour, & on the precedent Principles, to Argue one Question more, for the accomplishment of this Discourse: viz: *Whether a Father may disinherit his Eldest Son or Heire at Common Law, for such an Vnthriftinesse, as in most mens* * *Iudgements, is like to bee the Ruine of his Family?*

* Viz: *Grounded on the concurrence of great and violent Presumptions.*

Though many foule sinnes, besides the Abuse of Gods Blessings, bee concomitant to vnthriftinesse, yet because they are not apparent to the World (*de absconditis non judicat Prætor*) I will briefly argue, Whether in Reason, or Conscience, *a desperate Vnthrift* may be disinherited.

It is well knowne to all the Wise & Temperate, whose Iudgements Passion doth not ouer-sway, how great an Enemy Prodigality or Vnthriftinesse is to all manner of Goodnesse: and how cunningly she not only hinders the Increase of all Vertues in those in whom she raignes: but also vnjustly oft-times cuts off the vertuous reward of many a worthy Predecessour; yea, giues occasion to the Evill to detract, to the Good to suspect their Deserts. All

wihch

which, how great a Wrong it is to a Noble Family, I leaue to the indifferent Reader to censure. I will not deny but there may bee many sinnes in a Man, which in the sight of God, and iudgement of Men, of themselues are more haynous, and deserue a farre greater Damnation then Prodigality doth: yet are sinnes in this World to bee punisht, not as they are in themselues, but as by Circūstances they are offensiue to the Society, Peace, and Honour of Man-kind, which God and Nature, ever as the Reward to all Morall Vertues, and as the cheefe End of Mans Life, intended. For otherwise, Vsury, Detraction, Forgery, Adultery, Fornication, Swearing and Drunkennesse, with many more, which are as greevous offences in the Eye of Heaven as Theft, should be punisht with Death, as Theft is. But since they offend not so much the Peace of a publike Weale (at which the Civill Magistrate aymes) as Theft doth; they are not censur'd with such seuere Punishment as it is. All which shewes directly, that Offences by Circumstance are made in a Civill Society against which they are committed, either greater or lesser; and are accordingly to be punisht: and no lesse doth the Reason & right Rule of State command.

Those sinnes more punishable, which are more offensiue to common Society; though lesse heinous in their particular nature.

Out of which Grounds it is evident, that all Formes of Goverment doe most punish that Offender, who directly or indirectly seekes to disturbe the Peace, or overthrow the Liberty, or disgrace the Dignity of the State where he liues: yet many greater Offences then these may be committed, as

Inceſt, and Apoſtaſy, which are not ſo ſharply puniſht by the Civill Magiſtrate. For every one to whom God hath giuen power on Earth, doth chiefly ſeeke the End, for which his Power from aboue, is giuen to him; and doth cenſure and puniſh in the higheſt Degree, thoſe Offenſes, which tend to the Overthrow of a well-ſetled State, by good & lawfull Power confirmed.

Now to deſcend from theſe Premiſſes to the Point in Controverſy, and to apply what hath been ſaid, to our purpoſe. It is well knowne to the World, that a Family is a Civill Society, yea the only Common-Weale which God & Nature firſt ordained; from which, all Societies, Republikes, & *Species* of Regiment tooke their Originall. For the maintenance of which Society, there is no Queſtion, but God hath giuen many * Privileges to a Father, as well to reward the well-deſeruing, as to puniſh an evill child or member of his Body: not only by depriuing them of their expected Fortunes; but by cutting them off from his Body, either by Abdication or Exile, or Death it ſelfe. For it is cleere by the Civll Law, that a Father had for many yeares, not only free Power to diſinherit, but alſo Power of Life and Death over his Children, who ſhould greivouſly offend him or his, liuing vnder his Civill Government. But ſince that Things vnknowne are growne out of Vſe, and may ſeeme as well incredible, as ſtrange, I cannot in prudence paſſe ouer the Matter in Queſtion ſo lightly, as that it may bee worthily ſubiect to ſharp Cenſure, or raſhly branded

* Fathers of Families had power to bleſſe, curſe, *diſinherit* and puniſh with *death*; as appeares by the Examples of *Noë* towards *Cham*, *Abraham* towards *Hagar* and *Iſmael*, *Iacob* towards *Simeon* & *Levi*, and of *Iuda* towards *Thamar*. Gen. 38. 24. See Mr. *Godwin*, *vbi ſupra*

ded with the Marke of Vntruth.

Therefore laying aside the Testimony of the old *Romane* Lawes, in the case of a Fathers Soveraigne Power over the life of his child, given to him by the * *Twelue Tables*, where it is written: *Pater familiâs habeat jus vitæ*: yea, *--terq; filium venundandi potestatem*; I will breefly and effectually proue out of the *Sacred Text* it selfe, what I affirme. There then it plainely appeares, that Fathers had Power among the Iewes, to cause their children for Riot, Disorder, or Vnthriftinesse, to be ston'd to Death: *Ergo*, power to disinherit: For the Greater ever includes the Lesse. Not to seeme to speake without Booke, it shall not bee amisse to set downe *Moses* words, which are as follow.

* Cap. 3. *Dio. Halicar. l. 2. Antiq.*

*If a Man haue a stubborne and rebellious sonne, that will not obey the Command of his Father or Mother: and being chastised, shall be vnreclaimable; they shall apprehend and bring him to the Seniors of that City, and to the place of Iustice: and they shall say to them: This our sonne is incorrigible and disobedient, contemnes our Monitions, abandons himselfe to riotous Excesse, and is a Drunkard. The Citizens shall then ouerwhelme him * with Stones, and he shall dye; that yee may take Evill from among you, and that all Israel hearing it, may feare.*

Deut. 21. 18.

* *Stoning* was appointed a Death for *Blasphemy* & *Idolatry*: which (by cõcurrence *in this case*) argues how execrable a Crime *Disobedience to Parents* is in Gods sight.

Whence we may collect, how odious a Crime Vnthriftinesse was among the People of God; and what ample Power the Father had to punish the same in his Child. For if we obserue well the Manner of the Processe betweene the Father and the

Child, in this Caſe, wee ſhall finde that the Father was Accuſer, Witneſſe, and as it were Iudge of his owne Cauſe. For we read not that the *Senators* of the City did giue ſentence, or further examined the Proofes of the Fathers Accuſation: but their Preſence giuing as it were Allowance to a Fathers Power, and Intention to puniſh his Sonne, the People might without more Enquiry, ſtone to Death ſo evill a deſeruing Child. Which being well conſider'd, my Hope is, that it will never hereafter ſeeme vnlawfull, though ſomewhat ſtrange, that a Father ſhould diſinherit his Eldeſt, or any other ſonne of his, for the Cauſe only of Vnthriftines.

And although the World of Men is growne to that Greatneſſe, that it is neceſſary, One Generall Father, or Politike Head ſhould be in a Kingdome, or State, which may juſtly abridge ſome of theſe Privileges, and abate a Fathers Power (all Fathers being Children to the Father of their Countrey, their Lord and King, vnder God) yet the Power to advance and maintaine a Family by good and lawfull Meanes, is ſtill both allowable and commendable in a Parent; who may from time to time reward according to diſtributiue Iuſtice, all thoſe which liue vnder him, by leauing his Fortunes to them, as in Iuſtice they ſhall deſerue, and Law ſhall allow. So that, there is no Queſtion, but hee may ſtill diſinherit, according to the power of that Law vnder which he liues. For no other Ty is ouer him: God and Nature * allowing that, at this day, & for ever, which once they gaue vnto him. Which Authority,

* The Law *of Nature*, or (as Ciuilians ſtile it) *of Nations* [on which a Fathers Plenary Power is founded] is by S *Paul* expreſly termed *The Law of God.* Rom. 1. 31.

thority he not only may, but ought also to execute, as farre as the Law of Man shall permit: otherwise he shall erre in his Paternall Iustice.

For a Father is not only to beget and nourish his Children in his life, but by Natures law must provide to his Power, that they liue both in his life & after his death, to the honour of God, the service of their Countrey, and comfort of their Family: which were the only Ends for which God created Man a Civill and rationall Creature. All which, if it shall assuredly bee thought by a Father, that any Child of his will wholly neglect, or rather execute the contrary; then no questiō, a Father is not bound to leaue him any more then shall honestly suffice the Necessities of Nature. For (as before is said) no Man may giue or lend his Goods to any one, who will in all Mens Iudgements assuredly abuse them.

But let vs see, whether a *desperate Vnthrift* may be arraigned, and adjudged Guilty of these Accusations. Surely, it is cleere, that all vnthrifty * courses are displeasing to God, and contrary to to his Honour. And how can hee bee able to serue his Country, who in short time will not bee able to serue himselfe with Necessaries wherewith to liue, but must of force bee maintained like a Drone in a Common Wealth, out of others Labours. As for his Family, what greater Discomfort can it haue then an absolute Overthrow? Whereby, the Noble Acts and Honour gotten to it by vertuous Predecessors, are buried in Oblivion; and the present & future Hopes of all worldly and lawfull Honours

* *To play away our Predecessors labours; is a greater dishonour, then to pisse on our parents ashes, or raze their monuments.* Carp. Achitoph. p. 3.

(Vertues temporall Reward) are quite taken away. And shall not ALL THIS deserue Disinherison? Can there bee a greater sinne committed against the Honour and Essence of a Family, as it is a Family, then to be spoil'd of its Honour, and Life it selfe? For in these our Times, well-gotten Goods, and vsed as they ought, are the onely Soule, by which a Family, and all the vertuous Acts which it hath done, may liue.

The life and soule of a Family.

Since therefore so great a mischiefe is sought & aim'd at in this sinne, surely according to the proportion of distributiue Iustice, the greatest punishment is in Equity due to the same, according to the reason of the Precept, *Ius summum vnicuiq; tribuere.* Nature teacheth the silly Bees in their Common Wealth to doe to death their *Drones*, who liue of others Labours: and shall it bee thought vnlawfull for a Father, so to punish an incorrigible Unthrift, who will not only liue of others Labours, but also subvert the honourable Endeavours of his Noble Ancestors?

Thus if Sonnes may be deemed, and doomed by the offended, hauing power to doe both, according as the Offence done against them shall (by circumstance) be of Quality (as we haue proued they may and ought) then certainely it is lawfull for a Father so to doe, as I haue formerly demonstrated.

But because Examples in all Controversies of Fact, are the best Fortifications, I will, in illustration of the Premisses, adde some few to the former, drawne as well from Royall Precedents (by whose

Patterns

Patternes ---*totus componitur Orbis*) as from inferiour Persons, whose Qualities best fit the condition of our present subject. And if Kingdomes & Common Weales haue fauour'd it, then certainely, by all Arguments *à majori ad minus*, it may much rather be done, and ought to bee suffered in private Families.

CHAP. 9.

The main points of the Premises exemplified in diuers particular Facts, as well of Princes, as of private Persons.

IT is not fit perhaps to vrge the better Acceptance with God of *Abels* Offering aboue *Cain's* the Elder Brother; but that Estate which *Abel* had in *Adams* Patrimony. Nor will I reinforce *Iapheths* share in his Fathers Right to the whole World, though hee being the youngest Son of three, had *Europe* for his Inheritance, which in all Arts, and Vses of Life, farre excells *Africk*, *Asia*, and all the rest of the Earth. Whereas, according to the pretenses of those customary challenges, *Sem* should either haue had all, or beene Soveraigne Lord of all, and *Cham* and *Iaphet* with their Posterity, but Farmers, or Free-holders vnder him.

Temporis præ-lationem tulit improbitas: Dignitatis prærogatiuã Virtus. Philo: *de Caino & Abele.*

Abel.

Iaphet.

I will not also (as if there were penury of Resemblances) produce againe *Esau's* Disinherison, though that* were enough for our present purpose.

* In this case God said expresly, *The Elder shall serue the yonger.* See Gen. 25.23. and Mal 1.3. (with the *Geneva* Note there.)

For

For, had it beene Sinne (which neither Scripture, nor *Iosephus* in his Antiquities saith) the Mother could not haue procured it, God would not haue prosper'd it; nor *Iacob* himselfe, being a good man, haue accepted it, nor *Esau* (whose anger *Iacob* feared) haue left it vnrevenged. Neither is there in Scripture, nor in any written Law vnder Heaven, any Command to restraine the Fathers Power, but rather the contrary. For such is the Law of Nature, that they who are *ex æquo* one Mans Children, should, if not *ex æquo*, yet not *ex iniquo*, bee prouided for.

Against which Partiality, the Imperiall Lawes admit so forcible a Remedy, vnder the Title of an *inofficious Testament*, as it shall inable the younger Child, to a certaine proportion of estate, whether the deceased Father would or no; if hee had no just reason for omission, or disavowment in his last Will. The Example certainely of the same holy Patriark, *Iacob*, in depriving his eldest son *Ruben* of the dignity of Birth-right (for his enormous offence) and in preferring *Ephraim* before *Manasses*, the younger sonne before the Elder, being his Grand-children, against the set * Purpose of *Ioseph* their Father, seemes vnanswerable on behalfe of * Parents Power for transferring, or distributing their Blessings. Of which it may be verified: *Qui prior in Benedictione, est potior in Iure.*

Ruben. See Gen. 49. 4. & 1. Chro. 5. 1.

Ephraim.

*Gen. 48. 18.

* *Grandfathers* are vsually called *Fathers* in Scripture; specially in respect of such as inherit after them.

Of *Solomon* I haue spoken before, who was not *Davids* Eldest, but *Adonias*, after *Absalon* was slaine: as *David* himselfe was not the Eldest sonne of

of *Ieſſe* his Father, but the yongeſt, and yet* choſen by God (who ſees not as Man doth, for with him is no reſpect of Perſons) to gouerne *Iſrael*, though he was not ſet before his Brothers in the private Inheritance of the Family. And in the Goſpell it is apparent by the Parable of the Workmen, who came at vnequall houres into the Vine-yard, and yet had equall Wages, that Firſt and Laſt are to him alike; who though he created Things in number, Weight, and Meaſure, yet hee ſquares not his Favours by priority of Being, *but of well-deſeruing.

* See 1. Chro. 28. 4.

* Witneſſe *Iſmael* diſinherited, and *Iſaak* (the younger) preferr'd *by Gods Award*. See Gen. 21. 12. where ver. 10. & 11. it is cleare, that *Abraham* had (*otherwiſe*) divided his inheritance betwixt them. [*Can the World yeeld a better Precedent?*] N.B.

Auguſtus Caſar, the moſt Illuſtrious of all the firſt Emperours, ſetled the Imperiall ſucceſſion, not vpon his only Grand-child *Agrippa Poſthumus*, the ſonne of his daughter and ſole Heire, the Lady *Iulia*, though *Tacitus* ſaith, he was *nullius flagitij compertus* (then what, if he had indeed beene a notorious Vnthrift?) but vpon *Tiberius*, a ſtranger in Blood, and his ſonne by no other, but by a Civill Title of *Adoption*, becauſe he reputed him farre the fitter to governe.

Tiberius.

Choſroes King of *Perſia*, made *Medarſes* his yonger ſonne, Conſort in his Empire, leauing out his Eldeſt *Sinochius*.

Medarſes.

But to omit forraine Examples (for Brevity ſake) wherewith (of all Times and Places) Books are full: In our Country we might alleage the Fact of *Brutus*, the Protoparent of our Nation, who divided *Albion* (afterward call'd *Britaine*) to his three ſonnes, leauing only the beſt* Portion to *Locrinus*, anciently called *Loegria*; *Albania* (now *Scotland*)

Brutus.

* England.

to *Albanact*, and *Cambria*, or *Wales*, to *Camber*.

Leir, long after, knewe he had so much Power in himselfe as a Father, even against the Evidence of his owne Act of Partition, by the Originall Law of Nature; as for the Ingratitude of his owne Children, to conferre the Kingdome wholly vpon his younger Child *Cordeilla*, in prejudice of his Grandsonnes, *Morgan* and *Cunedage*, borne of his Eldest daughters.

Cordeilla.

I know some will giue no credence to *Brutus* Story, which in this case they might with the more Reason doe, if the ancient Weale, or British Custome, were not responsible in the Practise thereof, to that Act of *Brutus*. For, not only King *Roderik* divided his Kingdome of *Wales* to his three sonnes, (according to that distinction of the Country into *North-Wales*, *South-Wales*, and *Powisland*) but Others since haue done the like among them.

Roderik.

As for *Brutus* History, as it hath some Enemies, so also hath it many Friends, and those of Eminent Worth and Esteeme. *Henry* Archdeacon of *Huntington*, *Matthew* of *Westminster*, & others among the Ancient. Of latter Times, Sr *Iohn Price*, *William Lambert*, *Humfrey Lloyd*, Dr *White* of *Basingstoke*, Count *Palatine* in right of the Civill Law Chaire (an Honour due to the just Number of yeares by him passed) and innumerable others. Aboue all the rest, *Edward* the first, King of *England*, with all the Earles and Barons of this Realme, by their Authentike Deed or Instrument, confirmed in Parliament. But to proceed.

They

They who knowe the old Fashions of *Ireland*, either by Tradition, or by printed Statutes of that Nation, can testify of their most ancient Tenure, or Fundamentall Custome, which there is called *Tanistry*. By which, the Land and Cheefty of a Name, after the Predecessors Death, is not awarded to the Eldest sonne, but to the Worthiest (if I mis-remember not) the Iudgement whereof is left to the People, and such Tenents as haue Interest & Right of Suffrage: (as *Alexander* the Great, though as 'tis apparent in the *Maccabees*, very falsely is said to haue left his Empire.) And the Custome of equall shares may be in other places also, which never borrowed their equall Partitions from *Gavelkinde*: A Custome, I grant, which some haue lately alter'd in their private Families by Parliament.

Irish Tanistry

1. Macc. 1. 7.

To omit a Number of vnexceptionable Precedents and forraine Examples; If *All* must *necessarily* haue gone to *One*, how came it then to passe, that *in this Kingdome*, there were *at one time*, so many Great and Honourable Families of *one Blood*, disjoyn'd in their seats, and distinguished in their Armories, by different Arguments? Or, who is so meanely seene in our Antiquities and Stories, as not to knowe it was so? And that many renowned Houses (to speake as *de magis not is*) *Plantagenets*, *Mortimers*, *Beaufords*, *Beauchamps*, *Dela-Poles*, *Nevils*, *Graies*, and the *like*, haue growne and flourisht out of one common common Ancestor? It can never be refelled.

Sundry great Families of one Blood at a Time.

Of Disinherisons in Worthy Families, Mr

William Camden Clarenceaux King of Armes (the singular Ornament of England) giues vs two Eminent Examples. (And who is he, that remembers not one or other, in his owne Knowledge, or Acquaintance?)

Carewes. *Iane*, Daughter of *Hugh Courtney*, and Heire to her Mother, wife of *Nicolas* Lord *Carew*, disinherited her Eldest sonne *Thomas, cùm minùs reverenter matrem haberet*, for his irreverent Demeanour; and parted her Lands (which were goodly) among her three younger sonnes: of whom are sprung three severall Worshipfull Houses of the *Carewes*; called *Haccombe*, *Anthony*, and *Bury*. So that God by the successe crowned the Fact, and confirm'd the Lawfulnesse of *Partage*.

And this is the first of Mr *Camdens* Examples.

The other is this. *Bryand Lyle*, or *Fitz-Earle*, *Brientius de Insula.* Lord of *Abergevenny*, hauing two sonnes, both Leprous, built for them a *Lazaretto* or Spittall: and gaue to *Miles* Earle of *Hereford* farre the greatest part of his Patrimony from his Children. The One of these Examples is in the Description of *Devonshire*; and this other in *Monmouthshire*. And this may suffice for clearing the former Document (the subiect of this Whole Discourse) by Exemplification.

CHAP.

CHAP. 10.

That the Law of Naturall Equity & Reason confirme iust Disinheriſon: and that the riotous liues of Elder Brothers deſerue that vehement Increpation with which the Author cloſeth vp this Treatiſe.

LET vs now look into the Nature of Equity, and examine whether in Naturall Reaſon (which is the Law of all Lawes) the Temperate ought to be ſubject to Intemperate: (I mean, within the Verge of private Families.) Fooles and Frantiks, to whom no Law imputes *Sinne, are not puniſht for Theft or Murther, or for any other Offenſe which they doe, being mad, or vnreaſonable. And though humanely they cannot offend; yet, in THIS SORT according to Equity, they may be puniſhed. The Reaſon is: All Law being grounded on Naturall Equity (otherwiſe it is no Law) doth not only puniſh Offenſes committed, but alſo prevents Offenſes which may be done, by rationall or irrationall Creatures. And ſince Fooles and Madmen cannot offend to be puniſht, or by puniſhment be reform'd; and yet they with whom they liue, ſhall inevitably be offended, if not overthrown by them hauing *power, (as namely Brothers, Siſters, and their whole Family put in danger of extreame Miſery and Ruine) the Law according to all NATVRALL EQVITIE takes all Power from them.

* *Voluntas crimẽ non habet, vbi furore peccatur.* Salvian.

* *Nothing more dangerous then armed Madnes.*

I haue inserted this clause [*according to Naturall Equity*] for, that it is against Nature, that Men should be subject to Beasts, or insensible Creatures. Whervpon *Aristotle* disputing the Nature of Rule and Subjection, saith: that None are borne * slaues, but such as Nature hath abridged of the Vse of Reason, who being truly slaues, are vtterly vnfit to gouerne. Upon which Ground, the same Great Philosopher, prefers that Forme of Politie, where the Wisest and Best are admitted to the Manage of State-Affaires: (as at this day is most conspicuous, in the Blessed Raigne * and Regiment of our Most Gracious and Glorious SOVERAIGNE; whom God preserue.)

* Servitude proceeds not from the Law of Nature, but from Nature corrupted *See Mr Downings Discourse of the State Ecclesiast* p. 68.

* Consule *Plausus & Vota* Illustrissimi Equitis, D. *Henrici Wotton*; Viri omnium literarum, linguarum, ac Virtutum laude florentissimi.

But it may be said, What is all this to our Purpose? Yes: thus farre it may bee well applied. If Natures Intent to make all Man-kind, Reasonable, according to their *Species*, being hindred by some inevitable Accident, shall so blemish and maime Those, in whom such Defect and Naturall Weakenesse shall be found that They (according to Divine and Humane Law) may and ought to bee depriued of all Right and Claime to any Thing, (more, then to sustaine Nature) and debarred from all Superiority and Seniority, which by Law or Custome might otherwise haue falne on them; (because, according to Naturall and Divine Equity, MAN ought not to bee gouern'd by BEASTS; such as Idiots and Frantiks seeme to be:)

If This bee so, as according to Natures Rule it cannot bee otherwise, what punishment shall wee thinke

thinke due to *That Reasonable Creature*, borne in a Civill Society of Men, to whom Nature hath not beene a Step-dam in bestowing her Blessings; and whose Name, and Family hath beene ennobled & enriched by the Vertue and Industry of many Worthy Predecessors; who shall through Disorder, and inordinate Desires, habituated in him by Custome and Evill Conversation, become an *Vnreasonable and vnmeasurable sinfull and shamefull Creature*, a debauched * *Bedlem*, a wild *American*, a wilfull and most intolerable *Madman*, a Thing vnworthy the Name of *Man*; a *Prodigall* shall I say, or a PRODIGIE? who contrary to all *Rule*, *Law*, or *Order* of the most *Barbarous* Society of Men, takes away (by his outragious Impiety) the *Soule* (as I said before) of all his Ancestors; who being *dead*, yet long might liue in their * *Posterity*: and consumes the Womb of his Family (*Viper-like*) wherein he was borne: and without all Remembrance of his obligement to the Dead (whom, as having his *Being* from them, he ought to *honour*) or Respect to the Living (to whom hee should bee a *Comfort*) deuoures in some sort, them of his owne *Species*, Society, and Blood: All which, the *Canibals* doe not: For though they feed on their *Species*, which are Men like Themselues; yet they hunt after *Strangers*, and nourish themselues with *Others Flesh*, obseruing still some Lawe of Society among Themselues, which our CIVIL MONSTER doth not. For he, contrary to all Course of Nature, sucks oftimes the Blood of his neareſt and deareſt

The Prodigals Character.

See more of this Subject, in that Reverend and Illustrious Author *Democritus Iunior.* Part. 1. Sect. 2. Memb. 3. subsect. 13.

* The Civill Law appoints Curators for Prodigals (as for Madmen) and Guardians likewise of their Estates: the Want whereof, is the Ruine of many great Houses in England. *See D. Ridley, vbi sup. p. 268 where hee notes a Defect in our Lawes, which haue no prouisionall order therein.*

* Immortalitatem spondet [*Deus Abrahæ*] cum Genus promittit. Ambros. *Ariotous heire a Civill Monster.*

deareſt Friends: namely his *Children*, *Brothers*, and *Siſters*: yea, ſome of theſe *furious Fiends* haue brought their *all-tender-hearted Parents* to the Greateſt of all Woes, *Beggery in their old Age*. And all this, to maintaine by Force, or Fraud, *a damned Crew* of *Roring Divels* in the ſhapes of Men. Of eich of whom, we may ſay, dividually;

Tali Bacchus erat, tali Gargantua vultu;
*Tale triplex * mentum Pantagruelis erat.*

* Of the Family of the Treble-chins.

So did old *Bacchus*, or *Gargantua* ſwell;
And ſuch a *Bull-chin*, was *Pantagruell*.

And of the whole Mad-cap-*Fraternity* (for they will needs be * *Sworne Brothers*)

Peſtis, quâ gelidum Boreæ violentiùs Axem
Nulla vel infecit, nulla vel inficiet:

* *Fratres in malo*: or *fraterrimi* (as was ſaid of *Friers*.)

A greater Plague to this our Northerne Clime
Never yet came; nor can, in After-Time.

But to returne, from the purſuit of theſe *Salvages*. Nature hath given, yea ſhee hath ſo ſtrongly *inhabituated* a laudable Deſire in all Creatures to * preſerue their *Species*; that directly or indirectly to attempt the Contrary, were more then Monſtrous Immanity. Families, be they *Princely*, *Noble*, *Gentile*, or *Vulgar*, are in a ſort particular Kinds, or *Species* allow'd of by Natures Law to bee raiſed, and maintain'd, vnder, or in their cheefe *Genus*, Mankind Vniverſall: which to defeat or overthrow, by irregular, extravagant, and exorbitant Courſes, let the Philoſopher, either Naturall or Morall; the Lawier either Civill or Canon; the Divine, Schoolman, or Caſuiſt; judge how puniſhable.

* *Salvianus* excellently demonſtrates this in Bees. *De guber Dei* l. 4. p. 120.

Totus namq; mundus, & totum humanum genus, pignus eſt creatoris ſui. *Salvian. vbi ſup.*

Morall

Morall Law-makers in ancient Times prætermitted to make Lawes against Offenders of this nature. Being asked Why? They answer'd: That no Man could be so impiously ingrate, or inhumane. Whereby is evidenced, how *transcendently haynous* the Offense was adjudged by them, and how severe Punishment (were they to make Lawes in these our corrupt Times) they would prescribe for such *Cardinall Criminalls*.

Thus much for the Ventilation of the present Point in Question. In the arguing whereof, if what I write in defense of Younger Brothers (as here the Case is put) I seeme to haue receau'd *Ex traduce*, rather then *Ex certâ scientiâ*, the wiser sort will (I hope) not blame mee. For my Intent was onely, (as at first I promised) to set downe a Table-Discourse, and not a Controversy discust in Schooles. If I haue spoken according to Dialecticall Reason (as I beleeue) then may I safely thinke, that my Discourse is arm'd with strong Authority. For what hath beene spoken heretofore truely, which Reason hath not dictated to all * Authors Pennes? If therefore I were able to cite a

* *Salvianus* in this Case may speake for All: *Nam licet omnes admodum filij membra parentum esse videantur, non putandi sunt tamen membra eorum esse à quibus effectu operum discrepare: quia morum degenerantium pravitate pereunt in talibus beneficia naturæ*: Though all Sonnes be equally Members (or Portions) of their Parents, yet are not They so to be reputed, that shall *by lewd Courses* wilfully dismember themselues from them: for, degenerate Conditions render such Children vnworthy of the Benefits of Nature. *Salvian de gubern. Dei. lib.* 3°.

Thousand Great Authors for what I haue said, yet
All would amount to no more, but that
which Naturall Reason hath, or may
teach daily. All which, with
my Selfe, I intrust to the
gentle and equall
Censure of my
Courteous
Reader.

FINIS.

Implumis ales nunquam Cœlum
Omnivago penetret volatu.

LAVS DEO ET IESV MEO.

† *Mantissa.* †

SALVIANVS SALONIO EPISCOPO.

OMnia admodùm dicta tanti existimantur, quantus est ipse qui dixit. Siquidem tam imbecilla sunt judicia hujus temporis, ac penè tam nulla, vt hi qui legunt, non tam considerent quid legant, quàm cujus legant, nec tam dictionis vim atq; virtutem, quàm dictatoris cogitent dignitatem. Idcirco scriptor ille &c.

SSSS

Η ΦΙΛΑΔΕΛΦΙΑ ΜΕΝΕΤΩ.

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